(D)

No. 72-230

FILED

SEP 11 1972

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

DOROTHY M. FREESE, Individually, and as Executrix of the ESTATE of M. LLOYD FREESE
Petitioner

VERSUS

UNITED STATES OF AMERICA

PETITIONER'S REPLY BRIEF TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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The time limitation in 68 USC 210, is not jurisdictional and does not bar this Court's exercise of discretion to consider the case. See *Heflin v. U.S.*, (1959) 358 US 415. Further this filing occurred within the sixty (60) day period provided for in the statutes [21 USC 2101(c)] The Court, therefore, has the discretion to waive the late filing as long as it is within the 60 day

period within which they could have granted the extension. See *Heflin v. U.S.*, Supra.

It is respectfully pointed out that the one (1) day delay in filing was occasioned by a delay of the United States mail. The Writ was mailed within sufficient time to reach Washington within the Court prescribed time. See affidavit of the printer attached.

Petitioner for just cause had previously requested an extension until September 1, 1972. Since the Court could have granted the longer extension, it now has the discretion to waive the one day late filing and thus in essence grant the extension to that day. Petitioner further states that the questions involved in the litigation are of such importance that the Court's consideration thereof should not be lost because of the one (1) day late filing from the extension granted as long as the filing is within the period which could have been granted. The opposition to the petition should be denied.

Respectfully submitted,

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AFFIDAVIT

I, Harvey W. Sharp, under oath do hereby state that I am the owner of the Wayne R. Scott Co., law brief printers, and did the printing of the Writ of Certiorari filed in the Freese Case No. 72-230. That I personally deposited the Writ with correct air mail postage at the main post office, 320 S.W. 5th St., Oklahoma City, Oklahoma, at 10:30 p.m., August 6, 1972. This is further to state that I was informed that the Writ should have arrived at Washington, D.C. at 1:03 p.m. on the afternoon of the 7th day of August 1972, and that this information was given to me by the main post office in Oklahoma City.

Harvey W. Sharp
Harvey W. Sharp

Sworn to before me, a Notary Public, this 6th day of September 1972.

Notary Public

My Commission Expires:
6-16-74